

1. **PARTIES**

The Montana Department of Corrections (DEPARTMENT) and JC Nationwide (CONTRACTOR) enter into this Contract (**#06-045-MSP**). The parties names, addresses, telephone numbers are as follows:

Montana Department of Corrections
Montana State Prison (MSP)
1539 11th Avenue
PO Box 201301
Helena, MT 59620-1301
(406) 444-3930

JC Nationwide (JCN)
1150 Hammond Drive, Suite A-1200
Atlanta, GA 30328
(800) 272-2707
(770) 522-1890
Fax:(770) 522-1890

DEPARTMENT AND CONTRACTOR, AS PARTIES TO THIS CONTRACT AND FOR THE CONSIDERATION SET FORTH BELOW, AGREE AS FOLLOWS:

2. **DUTIES/RESPONSIBILITIES OF CONTRACTOR/DEPARTMENT**

CONTRACTOR agrees to provide the following services:

A. PHYSICIAN SERVICES

As requested by DEPARTMENT, subject to CONTRACTOR'S ability to provide qualified candidates, CONTRACTOR agrees to provide temporary physician services at Montana State Prison in Deer Lodge, Montana to incarcerated adult male offenders within the confines of a secure correctional facility. CONTRACTOR agrees to provide physicians who are appropriately qualified, trained, and licensed by the State of Montana. For physicians who are license holders in other states, CONTRACTOR shall provide that all licenses are in good standing. Prior to the start of training CONTRACTOR will provide the contract liaison with resumes and other pertinent information of each physician. DEPARTMENT reserves the right to reject proposed physicians, without cause, or to ask for removal of a physician at any time.

The parties agree that the contractual time period specified shall not be construed as an absolute right or guarantee of any physician to work within the facility during this time period.

DEPARTMENT acknowledges that physicians are not employees of CONTRACTOR. The relationship of physician to CONTRACTOR is that of an independent contractor.

B. SCHEDULING

DEPARTMENT will provide seven (7) days advance notice to physicians prior to modifying the agreed-upon schedule.

If DEPARTMENT cancels a shift without 24-hour advance notice, DEPARTMENT shall be liable to pay for that specified shift(s). Physicians must provide the MSP liaison at least 24 hours notice if, due to illness or emergency, the physician is unable to fill a shift.

C. PLACEMENT FEE

If a physician presented to DEPARTMENT during the term of this Contract provides coverage for the DEPARTMENT within two (2) years (a) after such presentation or (b) after such physician ceases to provide services to DEPARTMENT hereunder (whichever is later),

DEPARTMENT agrees such services shall have been arranged through CONTRACTOR. If these services are not arranged through CONTRACTOR, CONTRACTOR will consider DEPARTMENT'S use of the physician's services as "PERMANENT RECRUITMENT" in which case DEPARTMENT agrees to pay a placement fee of \$22,500.00. CONTRACTOR will reduce this placement fee to \$18,000.00 after the physician has worked on a full time locum tenens basis for six consecutive months, and will be reduced to \$15,000.00 after twelve consecutive months of full-time locum tenens.

D. TRAINING

Physicians must attend a pre-employment safety and security training class at MSP, prior to being allowed to work inside the secure compound at MSP. This training will include a minimum of two shifts of on-the-job training in the MSP Infirmary. Training will last approximately 24 hours. Physicians will be compensated for training in accordance with the payment schedule listed herein.

3. COMPENSATION/BILLING

DEPARTMENT shall compensate CONTRACTOR for successful delivery of services, provided pursuant to Section 2, in the following manner:

A. PHYSICIAN SERVICES

DEPARTMENT shall pay CONTRACTOR in accordance with the payment schedule herein. Compensation paid to CONTRACTOR **shall not exceed \$239,240.00 annually**, during the contract period without approval by DEPARTMENT.

Coverage for: Family Practice

Hourly Rate (weekday):	\$98.00	Per hour/8 hours per day—guaranteed (all-inclusive rate) - while on site.
Overtime:	\$134.00	Per Hour for hours worked over 8 hours per day.
Weekend Call:	\$450.00	Per weekend Day (a weekend day is equal to 24 hours; includes 2 hours of work or rounds)
Weeknight Call:	\$138.00	Per Night Flat rate for call duty, \$138 per hour if called in.

Coverage for: Psychiatry

Hourly Rate (weekday):	\$125.00	Per hour/8 hours per day - guaranteed (all-inclusive rate) - while on site.
Overtime:	\$155.00	Per Hour for hours worked over 8 hours per day.
Weekend Call:	\$450.00:	Per Day. Includes 2 hours of patient care by phone or on site, OT rate after 2 hours.
Weeknight Call:	\$155.00:	Per Night to carry pager, plus \$155 per hour for actual patient care by phone or visit. Patient care during call schedule will be billed in 15-minute increments. All-inclusive and covers all expenses of travel, lodging and

transportation. This rate covers all Montana Corrections Facilities.

- B. CONTRACTOR agrees to submit, no later than the 10th day of the following month in which physician services have been rendered under this contract, an invoice detailing the dates and hours of physician services. DEPARTMENT agrees to pay CONTRACTOR within 30 days following receipt of a correct invoice.
- C. DEPARTMENT may withhold payments to CONTRACTOR if CONTRACTOR has not performed in accordance with the terms of this Contract. DEPARTMENT agrees to contact CONTRACTOR immediately if they believe the service is not being provided in accordance with the terms of this Contract.
- D. The Contract number must be referenced on all invoices and correspondence pertaining to this Contract.

4. AGENCY ASSISTANCE

The parties recognize that services provided to DEPARTMENT shall occur within the confines of a secure correctional facility necessitating the use of DEPARTMENT facilities and equipment including, but not limited to, access to inmate records, work space within a correctional facility, and telephone service (e.g., Montana State Prison and Montana Women's Prison do not allow wireless phones within facility).

5. TIME OF PERFORMANCE

This Contract shall take effect upon receipt of final contract signature and shall terminate on June 30, 2007, unless terminated earlier in accordance with the terms of this Contract. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be renewed for a period not to exceed a total of five (5) additional years.

Upon expiration of this Contract, and in the absence of a new written agreement, the terms listed herein shall continue to govern the agreement between the parties until such time as a new Contract is signed.

6. LIAISONS AND NOTICE

- A. Cathy Redfern (846-1320 ext 2448), 500 Conley Lake Road, Deer Lodge MT 59722 or successor serves as DEPARTMENT'S liaison.
- B. Randy Weikle (800-272-2707), 1150 Hammond Drive, Suite A-1200, Atlanta Georgia 30328 or successor serves as CONTRACOR'S liaison.
- C. All notices and invoices required in this Contract shall be in writing, properly addressed to the liaison in (A) and (B) above, mailed first-class, postage prepaid. All notices sent via U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

7. OWNERSHIP AND PUBLICATION OF MATERIALS

All materials CONTRACTOR develops or utilizes (i.e., reports, spreadsheets, etc.) in performing the services set forth in Section 2 above shall be the sole property of DEPARTMENT.

8. **COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Neither CONTRACTOR nor its Independent Contractors are employees of the State. In accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA, CONTRACTOR and physicians providing services under this Contract are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana. CONTRACTOR shall cause physicians' providing service under this Contract to provide proof of compliance in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status and require physician's providing services under this Contract to maintain such insurance, exemption, or corporate officer status for the duration of the contract. CONTRACTOR shall submit a copy of all renewals of expired insurance and exemptions to: Department of Corrections, Fiscal Bureau, Attn: Contracts Manager, PO Box 201301, Helena, MT 59620-1301.

9. **HOLD HARMLESS AND INDEMNIFICATION**

- A. DEPARTMENT indemnifies and holds CONTRACTOR harmless with respect to any or all claims, suits, actions, liabilities and costs of any kind, including attorney's fees, arising from DEPARTMENT'S negligence or willful misconduct in the performance of this contract; unless it is determined that such claim, suit, action, liability or cost was caused by or resulted from the negligence or willful misconduct of CONTRACTOR.
- B. CONTRACTOR indemnifies and holds DEPARTMENT harmless with respect to any or all claims, suits, actions, liabilities, and costs of any kind, including attorney's fees, arising from CONTRACTORS' negligence or willful misconduct in the performance of this Contract; unless it is determined that such claim, suit, action, liability or cost was caused by or resulted from the negligence or willful misconduct of DEPARTMENT.

10. **INSURANCE**

CONTRACTOR shall provide medical malpractice insurance for all physicians providing coverage under this Contract.

- A. **General Requirements:** CONTRACTOR shall maintain for the duration of the Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by CONTRACTOR'S employees

Primary Insurance: CONTRACTOR'S insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of CONTRACTOR'S insurance and shall not contribute with it.

Deductibles and Self-Insured Retentions: Any deductible or self-insured retention must be declared to and approved by DEPARTMENT. At the request of DEPARTMENT either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, and volunteers; or (2) CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

Certificate of Insurance/Endorsements: A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages must be received by the Contracts Manager, PO Box 201301, Helena, MT 59620-1301 prior to start of work under this Contract. CONTRACTOR must immediately notify DEPARTMENT of any material change in insurance coverage, such as changes in limits, coverages, policy status, etc. DEPARTMENT reserves the right to require complete copies of insurance policies at all times.

- B. **Specific Requirements for Commercial General Liability:** CONTRACTOR shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000.00 per occurrence and \$3,000,000.00 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of CONTRACTOR.
- C. **Specific Requirements for Professional Liability:** CONTRACTOR shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of \$1,000,000.00 per occurrence and \$3,000,000.00 aggregate per year to cover such claims as may be caused by any act, omission, negligence of CONTRACTOR or its officers, agents, representatives, assigns or subcontractors or physicians providing services under this contract.

11. ACCESS AND RETENTION OF RECORDS

CONTRACTOR agrees to provide DEPARTMENT, the Legislative Auditor, or their authorized agents with access to any records necessary to determine Contract compliance (Ref. 18-1-118, MCA). CONTRACTOR agrees to create and retain all records supporting the services rendered and/or supplies delivered for a period of three years after either the completion date of this Contract or the conclusion of any claim, litigation, or exception relating to this Contract taken by the State of Montana or a third party.

12. PUBLIC INFORMATION

CONTRACTOR recognizes that this Contract may be subject to public inspection pursuant to Article 2, § 9 of the Montana Constitution. DEPARTMENT has a limited ability to assert a privacy interest in the subject matter of the Contract particularly with respect to information which is in the nature of a "trade secret" as the phrase is defined in federal law. In any event, CONTRACTOR agrees to hold DEPARTMENT harmless from any injury caused, in whole or in part, by the review of this agreement by an entity authorized to do so pursuant to Article 2, § 9 of the Montana Constitution.

13. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

CONTRACTOR shall not assign, sell, transfer, subcontract or sublet rights, or delegate duties under this Contract, in whole or in part, without the prior written approval of DEPARTMENT. No such written approval shall relieve CONTRACTOR of any obligation of this Contract and any transferee or subcontractor shall be considered the agent of CONTRACTOR. CONTRACTOR shall remain liable as between the original parties to the Contract as if no such assignment had occurred.

14. AMENDMENTS

All amendments to this Contract shall be in writing and signed by the parties.

15. COMPLIANCE WITH LAWS

CONTRACTOR must, in performance of work under the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil

Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by CONTRACTOR subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, CONTRACTOR agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by persons performing the Contract.

16. TERMINATION AND DEFAULT

- A. DEPARTMENT may, by written notice to CONTRACTOR, terminate this Contract in whole or in part at any time.
- B. Either party may terminate this Contract without cause by providing written notice to the other as described in this paragraph. The party desiring to terminate the Contract shall provide written notice to the other, which notice will establish a termination date not less than 30 days from the date of such notice. The termination of this Contract shall not limit any party's pursuit of remedies provided in this Contract or otherwise available under the laws of the State of Montana. In the event a scheduled or ongoing contract or assignment is cancelled by DEPARTMENT with less than a 30-day notice, DEPARTMENT agrees to pay CONTRACTOR a cancellation fee equal to the lesser of (a) the remaining days of the contract or (b) 20 days at the stated contractual rate.
- C. DEPARTMENT, at its sole discretion, may terminate or reduce the scope of this Contract if available funding is reduced for any reason.
- D. Failure on the part of either party to perform the provisions of this Contract constitutes default. Default may result in pursuit of a remedy for breach of Contract including, but not limited to, monetary damages or specific performance.

17. CHOICE OF LAW AND VENUE

The laws of Montana govern this Contract. The parties agree that any mediation, arbitration or litigation concerning this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees (Ref. 18-1-401, MCA).

18. LICENSURE

CONTRACTOR agrees to provide copies of current licenses and certifications applicable to CONTRACTOR physicians performing under this Contract.

19. ARBITRATION

Any Claim arising out of, or related to, this Contract shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Judgment on the award rendered by the Arbitrator may be entered in any court having jurisdiction thereof.

20. INTEGRATION

This Contract contains the entire agreement between the parties and no statement, promises, or inducements made by either party or agents thereof, which are not contained in the written Contract, shall be binding or valid. This Contract shall not be enlarged, modified, or altered except upon written agreement signed by all parties to the Contract.

21. SEVERABILITY

A declaration by any court, or any other binding legal source, that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.

22. COMPLETED CONTRACT

DEPARTMENT cannot disburse any payments under this Contract until a fully executed original Contract is returned to the Department of Corrections, Fiscal Bureau, PO Box 201301, 1539 11th Avenue, Helena, MT 59620-1301.

SIGNATURE

DEPARTMENT

CONTRACTOR

Mike Mahoney, Warden
Montana State Prison

Randy Weikle, Government Division Director
JC Nationwide

Date

Date

Approved for Legal Content by:

Legal Counsel
Department of Corrections

Date